

Debtor(s).

**Location:** Video Courtroom 126, U.S. Bankruptcy Court, 3420 Twelfth Street, Riverside, CA 92501

**Last date to file objections:** 01/22/2019

THE SOUTH 132 FEET OF LOT 85, ACCORDING TO MAP NO. 2 OF PART OF DUNLAP RANCH, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 20 OF MAPS, PAGE 47. RECORDS OF SAID COUNTY. APN: 0301-081-25

**Terms and conditions of sale:** See attached Statement of Information in Compliance with LBR 6004-1(c)(3).

**Proposed sale price: \$ 120,000.00**

**Overbid procedure (if any):** Initial overbid of \$125,000.00, minimum bid increments thereafter shall be \$1,000.00.

Overbids must be in writing and received by the Trustee and his counsel on or before January 29, 2019 (7 days prior to hearing on Sale Motion). Certified funds of 3% of the overbid purchase price must be delivered. (See attached.)

**If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:**

**Contact person for potential bidders (include name, address, telephone, fax and/or email address):**

Brandon J. Iskander  
Shulman Hodges & Bastian LLP  
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Irvine, CA 92618  
Telephone: (949) 340-3400  
Facsimile: (949) 340-3000  
Email: biskander@shbllp.com

Date: 01/15/2019

**Attachments:**

- (1) Statement of Information**
- (2) Sale Motion**

**Statement of Information in Compliance with LBR 6004-1(c)(3)**

<b><u>LBR 6004-1(c)(3) Requirement</u></b>	<b><u>Information</u></b>
<i>LBR 6004-1(c)(3)(A)</i> Date, Time, and Place of hearing on the proposed sale:	Hearing Date and Time: February 5, 2019 at 11:00 a.m. Hearing Place: Video Courtroom 126 U.S. Bankruptcy Court 3420 Twelfth Street, Riverside, CA 92501
<i>LBR 6004-1(c)(3)(B)</i> Name and address of the proposed buyer:	Steven A Gauthier, 32260 Avenue E, Yucaipa, CA 92399
<i>LBR 6004-1(c)(3)(C)</i> Description of the property to be sold:	Real Property located at 12446 15th Street, Yucaipa, California 92399 ("Property")
<i>LBR 6004-1(c)(3)(D)</i> Terms and conditions of the proposed sale, including the price and all contingencies:	The Buyer has offered \$120,000.00, subject overbid. The Buyer is paying all cash and is purchasing the Property "AS IS" without warranties of any kind, expressed or implied, being given by the Trustee, concerning the condition of the Property or the quality of the title thereto, or any other matters relating to the Property.
<i>LBR 6004-1(c)(3)(E)</i> Whether the proposed sale is free and clear of liens, claims or interests, or subject to them, and a description of all such liens, claims or interests:	<u>No</u> outstanding liens will be paid through escrow on the sale transaction. Thus, <u>no</u> outstanding liens will be released, discharged or terminated at the close of escrow. Any liens, encumbrances, or interests in the Property will continue to so encumber and run with the Property and <b><u>will not</u></b> attach to the sale proceed. A preliminary title report outlining the known liens, claims or interests impacting the Property is attached and further outlined in the <i>Chapter 7 Trustee's Motion for Order: (1) Approving the Sale of the Estate's Right, Title, and Interest in Real Property Subject to All Existing Liens, Claims, Encumbrances, Charges, and Interests pursuant to Bankruptcy Code § 363(b)(1) and Subject to Overbids; and (2) Granting Related Relief</i> ("Sale Motion").
<i>LBR 6004-1(c)(3)(F)</i> Whether the proposed sale is subject to higher and better bids:	The sale of the Property is subject to the Bidding Procedures set forth in the Sale Motion at pages 6 through 8.
<i>LBR 6004-1(c)(3)(G)</i> Consideration to be received by the Estate, including estimated commissions, fees and other costs of sale:	Purchase price of \$120,000.00, or an amount as increased by successful overbid. All costs of sale, including escrow and title fees, will be paid at closing and are estimated to total approximately \$4,000.00. The Trustee also seeks approval to use proceeds of the sale to reimburse his proposed auctioneer for labor and out-of-pocket costs not to exceed \$300.00. The Estate and the Buyer will each pay their own escrow fees as is customary in the County where the Property is located. Through the sale, and contingent upon Court approval, the Trustee estimates to generate net proceeds of approximately \$115,000.00 for the Estate.

<b><u>LBR 6004-1(c)(3) Requirement</u></b>	<b><u>Information</u></b>
<i>LBR 6004-1(c)(3)(H)</i> If authorization is sought to pay commission, the identity of the auctioneer, broker, or sales agent and the amount or percentage of the proposed commission to be paid:	On or about September 14, 2018, the Trustee entered into an Auction Agreement with BraunCo to auction the Property. The Auction Agreement (attached to the Sale Motion as Exhibit 2) has not previously been submitted to the Court for approval, especially as the proposed Buyer surfaced with an offer to purchase the Property subject to liens on terms more favorable than in a conventional auction. Notwithstanding, the Trustee seeks authority to pay BraunCo a six percent (6%) commission of the total purchase price for services rendered in assistance to the Estate and facilitating the proposed sale. Escrow fees shall be split between Buyer and the Estate in the manner customary in the County where the Property is located.
<i>LBR 6004-1(c)(3)(I)</i> A description of the estimated or possible tax consequences to the Estate, if known, and how any tax liability generated by the sale of the property will be paid:	The Trustee has not yet hired an accountant but given that the Property had been the Debtor's primary residence where she resided there two out of the last five years, the Estate may be entitled to capital gains exclusions such that the Trustee does not expect to pay any capital gains taxes on the sale.
<i>LBR 6004-1(c)(3)(J)</i> Date which objection must be filed and served:	Objections, if any, must be filed and served 14 days prior to the Hearing Date (or by January 22, 2019).

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6 Attorneys for Charles W. Daff,  
Chapter 7 Trustee  
7

8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION**  
10

11 In re  
12 **MABEL VIRGINIA LEMOI,**  
13 Debtor.  
14

Case No. 6:16-bk-20368-SC

Chapter 7

**CHAPTER 7 TRUSTEE'S MOTION FOR  
ORDER:**

(1) **APPROVING THE SALE OF THE  
ESTATE'S RIGHT, TITLE, AND  
INTEREST IN REAL PROPERTY  
SUBJECT TO ALL EXISTING LIENS,  
CLAIMS, ENCUMBRANCES,  
CHARGES AND INTERESTS  
PURSUANT TO BANKRUPTCY  
CODE § 363(b)(1) SUBJECT TO  
OVERBIDS;**

(2) **APPROVING BIDDING  
PROCEDURES UTILIZED; AND**

(3) **GRANTING RELATED RELIEF;**

**MEMORANDUM OF POINTS AND  
AUTHORITIES AND DECLARATION OF  
CHARLES W. DAFF IN SUPPORT  
THEREOF**

**[Real Property located at: 12446 15th Street,  
Yucaipa, California 92399]**

**Hearing Date:**

Date: February 5, 2019

Time: 11:00 a.m.

Place: Video Courtroom 126  
United States Bankruptcy Court  
3420 Twelfth Street  
Riverside, CA 92501

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1 **TO THE HONORABLE SCOTT C. CLARKSON, UNITED STATES BANKRUPTCY**  
2 **JUDGE, THE OFFICE OF THE UNITED STATES TRUSTEE, THE DEBTOR AND HER**  
3 **COUNSEL, ALL CREDITORS, AND ALL OTHER INTERESTED PARTIES:**

4 Charles W. Daff, the Chapter 7 trustee (“Trustee”) for the bankruptcy estate (“Estate”) of  
5 Mabel Virginia Lemoi (“Debtor”), brings this Motion for Order: (1) Approving the Sale of the  
6 Estate’s Right, Title, and Interest in Real Property Subject to All Existing Liens, Claims,  
7 Encumbrances, Charges and Interests Pursuant to Bankruptcy Code § 363(b)(1) Subject to  
8 Overbids; (2) Approving Bidding Procedures Utilized; and (3) Granting Related Relief (“Sale  
9 Motion”) and respectfully represents as follows:

10 **I. RELIEF REQUESTED**

11 Through this Sale Motion, the Trustee seeks authorization to sell the Property to the Buyer  
12 pursuant to the terms of the Purchase Agreement, subject to the Bidding Procedures, and a finding  
13 by the Court that the Buyer is a good faith buyer within the meaning of 11 U.S.C. § 363(m). Liens  
14 against the Property will not be paid through the sale and therefore the Buyer will take the Property  
15 subject to all existing liens, encumbrances, and interests upon it. All costs of sale, including escrow  
16 fees, title insurance and other costs incurred pursuant to the Purchase Agreement, will be paid at  
17 closing. After payment of the costs of sale, the Trustee expects to generate net proceeds of  
18 approximately \$115,000.00. The Trustee believes that (i) a meaningful distribution to unsecured  
19 creditors will be achieved as result of the sale, and (ii) good cause exists to grant the Sale Motion so  
20 that creditors do not lose this favorable business opportunity.

21 **II. BACKGROUND**

22 **A. The Bankruptcy Case**

23 The Debtor filed a voluntary petition under Chapter 7 of the Bankruptcy Code on November  
24 22, 2016 (“Petition Date”). Charles W. Daff is the duly appointed and acting Chapter 7 Trustee for  
25 the Debtor’s Estate.

26 As of November 19, 2018, the Court’s Claims Register reflects secured claims in the amount  
27 of \$40,849.42 and general unsecured claims in the amount of \$3,866.49. The secured claim, Proof  
28 of Claim 2, filed by Radiance Capital LLC is deemed unsecured pursuant to an Order Approving

1 Compromise entered on June 11, 2018 as Docket No. 88. Therefore, the creditor body in this case  
2 consists solely of general unsecured claims in the total amount of \$44,715.91.

3 **B. The Property**

4 On December 6, 2016, the Debtor listed an interest in the real property located at 12446 15th  
5 Street, Yucaipa, California 92399 (“Property”) on her bankruptcy Schedules A/B. However, the  
6 Trustee became aware that title was then, in fact, vested in Pinenut Path, LLC pursuant to a  
7 Quitclaim Deed executed by “Alpherie L. Jr. and Mabel V. Lemoi, Trustee’s [*sic.*] of the Lemoi  
8 Living Trust” and recorded on January 5, 2007 in the Official Records of the County of San  
9 Bernardino as Document No. 2007-0011066 (“January 2007 Quitclaim Deed”).

10 On March 3, 2017, the Trustee filed an adversary proceeding in the Bankruptcy Court against  
11 Pinenut Path, LLC, commencing the adversary proceeding entitled Daff v. Pinenut Path, LLC, 6:17-  
12 ap-01052-MJ (“Adversary Proceeding”), to void the January 2007 Quitclaim Deed and recover the  
13 Property for the benefit of the Estate.

14 Pursuant to a Stipulation for Entry of Judgment, Judgment was entered in the Adversary  
15 Proceeding voiding the January 2007 Quitclaim Deed and awarding turnover of the Property to the  
16 Trustee on behalf of the Estate. Also pursuant to the Judgment rendered in the Adversary  
17 Proceeding, the Debtor as the sole surviving managing member of Pinenut Path LLC executed a  
18 quitclaim deed to the Trustee for the Property.

19 On September 5, 2018, the Trustee recorded the quitclaim deed for the Property in the  
20 Official Records of the County of San Bernardino as Document No. 2018-0329639. Title to the  
21 Property is now vested in “Charles W. Daff, solely in his capacity as the Chapter 7 Trustee for the  
22 bankruptcy estate of MABEL VIRGINIA LEMOI, Debtor (United States Bankruptcy Court, Central  
23 District of California, Riverside Division, Case No. 6:16-bk-20368-MJ).” A true and correct copy  
24 of the recorded quitclaim deed for the Property is attached to the Declaration of Charles W. Daff  
25 (“Daff Declaration”) annexed hereto as **Exhibit 1**.

26 **C. Employment of Broker, Initial Marketing Period**

27 On June 12, 2017, the Trustee filed an Application to Employ Castle Realty Group, Inc. as  
28 Real Estate Broker (“Broker”) for the Estate (“Application”) (Dk. No. 60) to assist the Trustee in

1 the listing, marketing and negotiation for a sale of the Estate's interest in the Property. An Order  
2 approving the Application was entered on July 3, 2017 (Dk. No. 67). At that time, the Trustee  
3 believed the equity in the Property over consensual liens (not including disputed abstracts of  
4 judgment) was approximately \$150,000.00. The Broker listed the Property at an initial list price of  
5 \$535,000.00 and ultimately marketed the Property for fifteen (15) months without success. The  
6 difficulty in obtaining a conventional buyer for the Property stems from its unique characteristics.  
7 First, the Property is a single family residence lot, but it is zoned for multiple structures. Second,  
8 although the Property is zoned for multiple structures and there are two structures on the Property  
9 lot, one is a permanent stick built home and one is a mobile home affixed to a permanent foundation.  
10 Because the Property is not-quite a single family residence and not-quite a multi-unit residence, the  
11 Broker encountered challenges finding buyers who were capable of obtaining mortgage finance  
12 approval to purchase the Property. Although the Trustee believes the Broker's valuation was  
13 accurate, the peculiar nature of the Property ensured that it would remain out of reach from most  
14 conventional buyers.

15 **D. Negotiations Directly with the Proposed Buyer**

16 Adding to the complications of obtaining a buyer for the Property stemmed from the living  
17 situation of its occupants. The Property consists of two structures with two different mailing  
18 addresses, 12446 15th Street, where the Debtor lives, and 12434 15th Street, which the Debtor rents  
19 to two tenants.<sup>1</sup> The Debtor's tenants were not always cooperative with the Broker in its marketing  
20 efforts for the Property, but the Trustee was mindful of the importance of the tenants to preserving  
21 the equity in the Property. When the Trustee ultimately determined that he would not be able to sell  
22 the Property in a conventional sale and instructed the Broker to cancel the listing, the Trustee briefly  
23 engaged a real estate auctioneer, BraunCo, to pick up where the Broker left off.

24  
25  
26 <sup>1</sup> The Debtor testified on multiple occasions that the bankruptcy filing stemmed from her inability to pay expenses other  
27 than her two home equity loans on the Property. (See, e.g., Trustee's Opposition to Motion to Dismiss, Dk. No. 54, at  
28 32 & 43.) Given that the Property had no positive cash flow, the Trustee decided not to seek to operate the Property as  
a going concern and agreed with the Debtor to permit her to continue to collect rent for the purpose of preserving the  
equity in the Property as he continued efforts to liquidate the Estate's interest in the same. The tenants have since  
stopped paying rent and the Trustee is in the process of evicting them.

1 Before the motion for auction was filed and during the auction marketing period, Steve A.  
2 Gauthier (“Buyer”), the Debtor’s neighbor, surfaced as an interested purchaser and began credible  
3 negotiations with the Trustee’s counsel to purchase the Property. The Buyer has a unique  
4 connection to the Property, the Debtor, and the Debtor’s tenants, and has plans to accommodate the  
5 Debtor’s continued occupancy after this proposed sale. As negotiations progressed between the  
6 Buyer and the Trustee’s counsel, the Trustee determined that the costs of proceeding with an auction  
7 outweighed a sale directly to this unique Buyer.<sup>2</sup>

8 **E. The Purchase Offer and Summary of the Sale Terms**

9 The Trustee has received an offer from the Buyer to purchase the Property for \$120,000.00  
10 subject to all existing liens, encumbrances, and interests. The purchase price includes a \$12,000.00  
11 deposit. The Buyer has agreed that his offer is subject to overbids. The Purchase Agreement and  
12 Joint Escrow Instructions and all addenda thereto (“Purchase Agreement”) are attached to the Daff  
13 Declaration as **Exhibit 2**. The Buyer is paying all cash and is purchasing the Property “AS IS”  
14 without warranties of any kind, expressed or implied, being given by the Trustee concerning the  
15 condition of the Property or the quality of the title thereto, or any other matters relating to the  
16 Property. Title insurance will be paid for by the Buyer. Escrow fees will be split between Buyer  
17 and Seller at closing. All other costs will be split between the Estate and the Buyer as is customary  
18 in the County where the Property is located (San Bernardino County, California).

19 **F. Treatment of Liens and Encumbrances Through the Sale**

20 The Estate will be delivering the Property subject to all liens and encumbrances and thus  
21 will not be paying any liens encumbering the Property. The Buyer agrees to take the Property from  
22 the Estate subject to all existing liens, encumbrances, and interests upon it.

23 **G. Payment of Additional Closing Expense**

24 As referenced *supra* in footnote 1, the Debtor’s tenants have ceased paying rent to the  
25 Debtor, who is now no longer able to pay the mortgage. The Debtor’s tenants are thus diminishing  
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27 <sup>2</sup> Notwithstanding the Trustee’s decision to ultimately cancel the auction during the auction marketing period, the  
28 Trustee intends to file an application to employ BraunCo and seek Court approval for the payment of a commission and  
expenses for BraunCo’s work in the context of this case.

1 the equity in the Property and jeopardizing the success of the proposed sale. As part of the sale, the  
2 Trustee is engaged in earnest efforts to ensure that the tenants are evicted or in the process of being  
3 evicted if the Court approves the sale. Rather than engage in unlawful detainer litigation with the  
4 tenants, which may prove risky and costly in the long run, the Buyer has engaged in negotiations  
5 with the tenants for a voluntary eviction in consideration of a small offering. As part of the sale, the  
6 Estate may need to contribute a share of the payout to ensure that the Buyer obtains the Property  
7 without the added considerable risk of losses at the tenants' hands. Accordingly, the Trustee seeks  
8 Court approval to pay no more than one thousand dollars (\$1,000.00) from the sale proceeds toward  
9 the tenants' voluntary eviction.

10 **H. Notice of the Bidding Procedures**

11 The Trustee has determined that it would benefit the Estate to permit all interested parties to  
12 receive information and bid for the Property instead of selling to the Buyer on an exclusive basis.  
13 Accordingly, in order to obtain the highest and best offer for the Property, the Trustee is utilizing,  
14 and seeks Court approval of, the following procedures for bidding ("Bidding Procedures"):

15 1. Potential overbidder(s) must bid an initial amount of \$125,000.00. Minimum bid  
16 increments thereafter shall be \$1,000.00. The Trustee shall have sole discretion in determining  
which overbid is the best for the Estate and will seek approval from the Court of the same.

17 2. Overbids must be in writing and be received by the Trustee's counsel, Shulman  
18 Hodges & Bastian LLP to the attention of Brandon J. Iskander on or before seven (7) days prior to  
the hearing on the Sale Motion (or by January 29, 2019).

19 3. Overbids must be accompanied by certified funds in an amount equal to 3% of the  
20 overbid purchase price.

21 4. The overbidder must also provide evidence of having sufficient specifically  
22 committed funds to complete the transaction, or a lending commitment for the bid amount and such  
23 other documentation relevant to the bidder's ability to qualify as the purchaser of the Property and  
24 ability to close the sale and immediately and unconditionally pay the winning bid purchase price at  
closing.

25 5. The overbidder must seek to acquire the Property on terms and conditions not less  
26 favorable to the Estate than the terms and conditions to which the Buyer has agreed to purchase the  
Property as set forth in the Purchase Agreement attached as **Exhibit 2** to the Daff Declaration,  
27 including closing on the sale of the Property in the same time parameters as the Buyer.

28 6. All competing bids must acknowledge that the Property is being sold on an "AS IS"  
basis without warranties of any kind, expressed or implied, being given by the Trustee, concerning

1 the condition of the Property or the quality of the title thereto, or any other matters relating to the  
2 Property. The competing bid buyer must represent and warrant that he/she is purchasing the  
3 Property as a result of his/her own investigations and is not buying the Property pursuant to any  
4 representation made by any broker, agent, accountant, attorney or employee acting at the direction,  
5 or on the behalf of the Trustee. The competing bidder must acknowledge that he/she has inspected  
6 the Property, and upon closing of escrow governed by the Purchase Agreement, the competing buyer  
7 forever waives, for himself/herself, his/her heirs, successors and assigns, all claims against the  
8 Debtor, her attorneys, agents and employees, the Estate, Charles W. Daff as Trustee and  
9 individually, and his attorneys, agents and employees, arising or which might otherwise arise in the  
10 future concerning the Property.

11 7. If overbids are received, the final bidding round for the Property shall be held at the  
12 hearing on the Sale Motion in order to allow all potential bidders the opportunity to overbid and  
13 purchase the Property. At the final bidding round, the Trustee or his counsel will, in the exercise of  
14 their business judgment and subject to Court approval, accept the bidder who has made the highest  
15 and best offer to purchase the Property, consistent with these Bidding Procedures (“Successful  
16 Bidder”).

17 8. At the hearing on the Sale Motion, the Trustee will seek entry of an order, *inter alia*,  
18 authorizing and approving the sale of the Property to the Successful Bidder. The hearing on the  
19 Sale Motion may be adjourned or rescheduled without notice other than by an announcement of the  
20 adjourned date at the hearing on the Sale Motion.

21 9. In the event the Successful Bidder fails to close on the sale of the Property within the  
22 time parameters approved by the Court, the Trustee shall retain the Successful Bidder’s Deposit and  
23 will be released from his obligation to sell the Property to the Successful Bidder and the Trustee  
24 may then sell the Property to the First Back-Up Bidder approved by the Court at the hearing on the  
25 Sale Motion.

26 10. In the event First Back-Up Bidder fails to close on the sale of the Property within the  
27 time parameters approved by the Court, the Trustee shall retain the First Back-Up Bidder’s Deposit  
28 and will be released from his obligation to sell the Property to the First Back-Up Bidder and the  
Trustee may then sell the Property to the Second Back-Up Bidder approved by the Court at the  
hearing on the Sale Motion.

The Bidding Procedures will be provided to all creditors and any potential bidders or parties  
who have shown an interest in the Property. In addition, a Notice of Sale of Estate Property will be  
filed with the Court for posting on the Court’s website under the link “Current Notices of Sales,”  
thereby giving notice to additional potential interested parties. Based on the foregoing, the Trustee  
believes that under the circumstances of this case, the Property will have been appropriately  
marketed for bidding.

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1 **I. Costs of Sale**

2 The Buyer shall bear the cost of all deed recording fees, settlement fees, tax certificates, title  
3 charges, notary fees, documentary transfer fees, and any other taxes imposed as a result of the  
4 transfer of the title to the Property to the Buyer. The Estate will be splitting escrow fees with the  
5 Buyer and will also pay the cost of interim insurance on the Property which has been advanced by  
6 the Buyer. A true and correct estimated escrow statement for the Property detailing the split of costs  
7 is attached to the Daff Declaration as **Exhibit 3**. The estimated total insurance cost before close of  
8 escrow is estimated to be \$703.05. True and correct invoices for interim insurance for the Property  
9 are attached to the Daff Declaration as **Exhibit 4**. In sum, the Estate will pay only half of the escrow  
10 fees and will reimburse the Buyer for interim insurance on the Property. In addition, no real property  
11 taxes and city liens, if any, will be paid by the Estate through the sale.

12 **J. Tax Consequences**

13 The Trustee has not yet hired an accountant but given that the Property had been the Debtor's  
14 primary residence, the Estate may be entitled to capital gains exclusions such that the Trustee does  
15 not expect to pay any capital gains taxes on the sale.

16 **K. Turnover of the Property at Closing**

17 The Property will be sold subject to all existing liens, claims, encumbrances, charges, and  
18 interests impacting the Property, including the possessory interest of the Debtor. The Trustee is in  
19 the process of evicting the Debtor's tenant for failure to pay rent and at the Buyer's request.  
20 However, upon approval of the sale, the Trustee will assign the Estate's interest to the Buyer. The  
21 Trustee will not be seeking turnover of the Property as to the Debtor and is informed that the  
22 proposed Buyer has plans to accommodate the Debtor's occupancy in the form of a long term below-  
23 market rental agreement.

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III. ARGUMENT<sup>3</sup>

A. There is a Good Business Reason for the Sale, Which is in the Best Interest of the Estate

The first two enumerated duties of a Chapter 7 trustee under the Bankruptcy Code are to collect and reduce to money the property of the estate and to be accountable for all property received. See 11 U.S.C. §§ 704(a)(1) & (2). The Trustee, after notice and hearing, may sell property of the estate. 11 U.S.C. § 363(b). Courts ordinarily will approve a proposed sale if there is a good business reason for the sale and the sale is in the best interests of the estate. *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); *In re Lionel Corp.*, 722 F.2d 1063, 1069 (2d Cir. 1983). Here, the sale is anticipated to net the Estate approximately \$115,000.00 calculated as follows (amounts are estimated):

Sale Price (or an amount as increased by successful overbid)	\$120,000.00
Less closing costs (estimated at 2% of sales price)	(\$2,400.00)
Less contribution toward eviction of Debtor's tenants	(\$1,000.00)
Less property taxes (pro-rata) (paid by Buyer) <sup>4</sup>	(\$0.00)
Less insurance reimbursement to Buyer	(\$703.05)
Estimated net sale proceeds (will increase if there is a successful overbid)	\$115,896.95

Accordingly, the Trustee expects to make a meaningful distribution to unsecured creditors from the sale of the Property. If the Sale Motion is not approved, then there will be a substantial loss to the Estate. In such event, the Estate will not receive any benefit from the Property.

Furthermore, the Trustee believes that the proposed sale will be at fair market value because it is the best offer the Estate has received thus far for the Property, and the sale is subject to the Bidding Procedures. Accordingly, the Trustee respectfully submits that, if this Court applies the good business reason standard suggested by the Second Circuit in *Lionel*, the sale should be approved.

<sup>3</sup> Although Local Bankruptcy Rule 6004-1(c)(2)(C) does not require that a memorandum of points and authorities be filed in support of the Motion, the Trustee is nevertheless submitting one.

<sup>4</sup> Because the Trustee is selling the Property to the Buyer subject to all liens, encumbrances, interests, and charges upon the land, including property taxes, the Estate will not be responsible for paying any property taxes as part of the sale. However, as reflected in **Exhibit 3** attached hereto, the Buyer may elect at his convenience to contribute additional funds to pay any outstanding property taxes as part of the close of escrow.



1 **B. Request for Payment of Costs**

2 Bankruptcy Code Section 328 allows employment of a professional person under Section  
3 327 “on any reasonable terms and conditions of employment, including on a retainer, on an hourly  
4 basis, on a fixed or percentage fee basis, or on a contingent fee basis.” 11 U.S.C. § 328(a). The  
5 Trustee also seeks authority to pay not more than \$1,000.00 as a contribution toward Buyer’s  
6 eviction efforts with respect to Debtor’s non-rent-paying tenants.

7 In addition, the Trustee seeks approval to use proceeds of the sale to reimburse the Buyer in  
8 the amount of approximately \$703.05 for the cost of insurance for the Property advanced in the  
9 interim period between execution of the purchase agreement and any Court order approving this  
10 proposed sale.

11 **C. The Court Has the Authority to Approve the Bidding Procedures**

12 Implementing the Bidding Procedures is an action outside of the ordinary course of the  
13 business. Bankruptcy Code Section 363(b)(1) provides that a trustee “after notice and hearing, may  
14 use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. §  
15 363(b)(1). Furthermore, under Bankruptcy Code Section 105(a): “[t]he court may issue any order,  
16 process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11  
17 U.S.C. § 105(a). Thus, pursuant to Bankruptcy Code sections 363(b)(1) and 105(a), this Court may  
18 approve the Bidding Procedures, which will assist the Trustee to obtain the best possible price on  
19 the best possible terms for the Property.

20 **D. The Court Has the Authority to Find that the Buyer is a Good Faith Purchaser**

21 The Trustee requests a determination that the Buyer is a good faith purchaser pursuant to 11  
22 U.S.C. § 363(m). There is broad authority for this Court to find that the Buyer is a good faith  
23 purchaser where the Court has evidence of a purchaser’s good faith and that the purchase is for  
24 value. *In re Ewell*, 958 F.2d 276, 281 (9th Cir. 1992). Here, the Buyer has no relation to the Trustee  
25 and is not a creditor of the bankruptcy estate. The Buyer does have a relationship with the Debtor,  
26 but only as her longtime neighbor. The Sale is an arm’s length transaction and there is no allegation  
27 or evidence that the Buyer has engaged in fraud, collusion, or attempted to take grossly unfair  
28

1 advantage of other bidders. Moreover, the Property has been marketed to the public for a period of  
2 several months and the Sale is subject to overbidding at the hearing on this Motion.

3 **E. The Court has the Authority to Waive the Fourteen-Day Stay of Sale**

4 Federal Rule of Bankruptcy Procedure 6004(h) provides that “[a]n order authorizing the use,  
5 sale or lease of property other than cash collateral is stayed until the expiration of 14 days after entry  
6 of the order, unless the Court orders otherwise.” Fed. R. Bankr. P. 6004(h). The Trustee desires to  
7 close the sale as soon as practicable after entry of an order approving the sale. Accordingly, the  
8 Trustee requests that the Court, in the discretion provided it under Federal Rule of Bankruptcy  
9 Procedure 6004(h), waive the fourteen (14) day stay requirement.

10 **IV. CONCLUSION**

11 **WHEREFORE**, based upon the foregoing, the Trustee submits that good cause exists for  
12 granting the Sale Motion and requests that the Court enter an order which provides as follows:

- 13 1. Approving the Bidding Procedures utilized by the Trustee as described above.
- 14 2. Authorizing the Trustee to sell the Property to the Buyer, or the successful  
15 overbidder, as the case may be, pursuant to the terms and conditions as set forth in the Purchase  
16 Agreement attached as **Exhibit 2** to the Daff Declaration.
- 17 3. Authorizing the Trustee to sign any and all documents convenient and necessary to  
18 complete the sale transaction as set forth above, including any and all conveyances contemplated by  
19 the Purchase Agreement.
- 20 4. Approving the payment of a contribution not to exceed \$1,000.00 toward the eviction  
21 of Debtor’s non-paying tenants.
- 22 5. Authorizing the Trustee to pay interim insurance costs and escrow fees which shall  
23 be split between Buyer and Estate in the manner customary in the County where the Property is  
24 located (San Bernardino County, California).
- 25 6. Determining that the Buyer is in good faith pursuant to Bankruptcy Code Section  
26 363(m).
- 27 7. Waiving the fourteen day stay of the order approving the sale of the Property under  
28 Federal Rules of Bankruptcy Procedure 6004(h).



**DECLARATION OF CHARLES W. DAFF**

I, Charles W. Daff, declare as follows:

1. I am the duly-appointed, qualified and acting Chapter 7 trustee for the bankruptcy estate (“Estate”) of *In re Mabel Virginia Lemoi*, Case No. 6:16-bk-20368-SC. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would competently testify to the matters stated herein.

2. I make this declaration in support of my Motion for Order: (1) Approving the Sale of the Estate’s Right, Title, and Interest in Real Property Subject to All Existing Liens, Claims, Encumbrances, Charges and Interests Pursuant to Bankruptcy Code § 363(b)(1) Subject to Overbids; (2) Approving Bidding Procedures Utilized; and (3) Granting Related Relief (“Sale Motion”). All capitalized terms not otherwise defined herein have the meaning set forth in the Sale Motion.

3. A true and correct copy of the quitclaim deed recorded in the official records of the San Bernardino County Recorder vesting title to the Property in the Estate is attached hereto as **Exhibit 1**.

4. The Purchase Agreement with the Buyer is attached hereto as **Exhibit 2**.

5. A true and correct statement of estimated escrow fees to Buyer and Seller is attached hereto as **Exhibit 3**.

6. True and correct invoices for insurance for the Property obtained by the proposed Buyer are attached hereto as **Exhibit 4**. I seek authority to reimburse the Buyer for the cost of interim insurance through the proceeds from the sale.

7. A true and correct title report for the Property is attached hereto as **Exhibit 5**.

8. The following information is being provided pursuant to Local Bankruptcy Rule 6004-1(c)(2)(b). The Estate does not have the funds to obtain a formal written appraisal for the estimated value of the Property. The Property has been on the market for approximately eighteen months. In that time, there have been several inquiries by brokers on behalf of potential buyers, however a conventional buyer through conventional financing could not be obtained because of the

1 maintenance of two structures on the Property, one of which is a mobile home affixed to a permanent  
2 base.

3 9. I believe that the proposed sale, subject to liens and subject to overbids, will be at  
4 fair market value. Given that the sale is subject to overbids, I anticipate that the Estate will receive  
5 the best and highest value for the Property and therefore the proposed sale price is fair and  
6 reasonable.

7 10. The sale is in the best interest of the Estate because the Estate is anticipated to receive  
8 net proceeds of approximately \$115,000.00. As it is my general practice, I will work with my  
9 professionals (and if necessary, ask them to reduce administrative expenses) to ensure that creditors  
10 receive a meaningful distribution.

11 11. As is required by Federal Rule of Bankruptcy Procedure 6004(f) and Local  
12 Bankruptcy Rule 6004-1(g), I will file a Report of Sale detailing the terms of the sale shortly after  
13 the sale closes.

14 12. For the reasons set forth in the Sale Motion and this Declaration, I respectfully  
15 request that the Court grant the Sale Motion so that I do not lose this favorable business opportunity  
16 to generate significant funds for the Estate from the Property.

17 I declare under penalty of perjury under the laws of the United States of America that the  
18 foregoing is true and correct.

19 Executed on January <sup>15</sup>\_\_\_\_, 2019, at Santa Ana, California.

20  
21   
22 \_\_\_\_\_  
23 Charles W. Daff  
24  
25  
26  
27  
28

# EXHIBIT 1

*Nahmunde Legal*

Record at the request of,  
and when recorded, return to:  
Brandon J. Iskander, Esq.  
Shulman Hodges & Bastian LLP  
100 Spectrum Center Drive, Suite 600  
Irvine, California 92610

Recorded in Official Records, County of San Bernardino

9/05/2018

4:56 PM

SG  
SAN

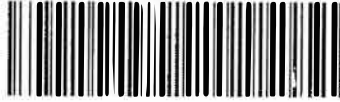


**BOB DUTTON**

ASSESSOR - RECORDER - CLERK

P Counter

Doc# 2018-0329639



Titles	1	Pages	7
Fees		42.00	
Taxes		0.00	
CA SB2 Fee		75.00	
Others		6.00	
<b>Paid</b>		<b>\$123.00</b>	

*DIT O*

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

**QUITCLAIM DEED**

DOCUMENT TITLE

SEPARATE PAGE, PURSUANT TO GOVT. CODE 27361

EXHIBIT 1

RECORDING REQUESTED BY

5252-000

12446 15th St., Yucaipa, CA 92399 (APN: 0301-081-25)

AND WHEN RECORDED MAIL DOCUMENT AND  
TAX STATEMENT TO:

NAME Charles W. Daff, Chapter 7 Trustee

STREET 2107 N. Broadway  
ADDRESS Suite 308

CITY, STATE & Santa Ana, CA 92706

ZIP CODE (657) 218-4800

TITLE ORDER NO. \_\_\_\_\_

ESCROW NO. \_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**QUITCLAIM DEED**

TRA: \_\_\_\_\_

APN: 0301-081-25

The undersigned grantor(s) declare(s) R & T 11922

DOCUMENTARY TRANSFER TAX \$ -0- no consideration

- ☐ computed on full value of property conveyed, or  
☐ computed on full value less liens and encumbrances remaining at time of sale.  
☐ Unincorporated Area City of YUCAIPA

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, I (We) \_\_\_\_\_

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

(NAME OF GRANTOR(S))

hereby remise, release and quitclaim to Charles W. Daff, solely in his capacity as the Chapter 7 Trustee for the bankruptcy estate of MABEL

VIRGINIA LEMOI, Debtor (United States Bankruptcy Court, Central District of California, Riverside Division, Case No: 6:16-bk-20368-MJ)

(NAME OF GRANTEE(S))

the following described real property in the City of YUCAIPA, County of SAN BERNARDINO

State of CALIFORNIA

(Insert Legal Description)

SEE EXHIBIT "B" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

SEE EXHIBIT "C" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

DATED: 7/6/17

A notary public or other officer completing this certificate  
verifies only the identity of the individual who signed the  
document to which this certificate is attached, and not  
the truthfulness, accuracy, or validity of that document.

PINENUT PATH LCC [actually: PINENUT PATH,  
LLC, a Nevada limited liability company]

Name BY: Mabel V. Lemoi  
NAME/TITLE: Mabel V. Lemoi, sole Managing Member

THE LEMOI LIVING TRUST [actually: The Alpherie L. And

Name Mabel V. Lemoi Living Trust, dated July 2, 1999]  
BY: Mabel V. Lemoi  
NAME/TITLE: Mabel V. Lemoi, sole Trustee

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On July 6, 2017 before me, P. LITTLE, Notary Public, personally appeared  
(here insert name and title of the officer)

MABEL V. LEMOI

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature P. Little (SEAL)

MAIL TAX STATEMENT AS DIRECTED ABOVE



CTC-13F

EXHIBIT 1



**EXHIBIT "A"**

THE LEMOI LIVING TRUST [actually: THE ALPHERIE L. AND MABEL V. LEMOI LIVING TRUST DATED JULY 2, 1999], and

PINENUT PATH LCC [actually: PINENUT PATH, LLC, a Nevada limited liability company]

---

Transferor "Alpherie L. Jr. & Mabel V. Lemoi Trustee's of the Lemoi Living Trust" under Instrument 2007-0011066 recorded in San Bernardino County, CA on January 5, 2007 actually took title on Instrument 2004-0304636 recorded in San Bernardino County, CA on May 3, 2004 as:

ALPHERIE L. LEMOI JR. AND MABEL V. LEMOI, TRUSTEES  
OF THE  
ALPHERIE L. AND MABEL V. LEMOI LIVING TRUST DATED JULY 2, 1999

**EXHIBIT "B"**  
**TO**  
**QUITCLAIM DEED**

*12446 15<sup>th</sup> Street, Yucaipa, CA 92399*  
(APN: 0301-081025)

THE SOUTH 132.00 FEET OF LOT 85 OF MAP NO. 2 OF A PART OF DUNLAP RANCH, IN THE CITY OF YUCAIPA, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 20, PAGE(S) 47, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

---

Transferee "PINENUT PATH LCC" [actually: PINENUT PATH, LLC, a Nevada limited liability company] took title under Instrument 2007-0011066 recorded in San Bernardino County, CA on January 5, 2007 which erroneously listed the legal description as:

LT: 85 SD: MAP NO. 2 OF A PART OF DUNLAP RANCH BK: 20 PG: 47, COUNTY OF SAN BERNARDINO, CA

**INSTRUMENT 2007-0011066 HAS BEEN VOIDED AND THE SUBJECT REAL PROPERTY PRESERVED FOR THE BENEFIT OF TRANSFEROR HERETO (BANKRUPTCY ESTATE) AS STATED IN EXHIBIT "C" JUDGMENT ATTACHED HERETO.**

**EXHIBIT "C"**

**JUDGMENT**

This QUITCLAIM DEED is filed pursuant to that certain **JUDGMENT** (a certified copy of which is attached hereto), Filed and Entered June 30, 2017 in that certain Chapter 7 bankruptcy filed in the United States Bankruptcy Court, Central District of California, Riverside Division as Case No: 6:16-bk-20368-MJ and titled "In re MABEL VIRGINIA LEMOI, Debtor" **voiding** that certain transfer of real property located at 12446 15<sup>th</sup> Street, Yucaipa, CA 92399 from Debtor to PINENUT PATH LCC (actually: Pinenut Path, LLC, a Nevada limited liability company) which was recorded as Instrument 2007-0011066 in the records of San Bernardino County, California on January 5, 2007.

Lynda T. Bui – Bar No. 201002  
Brandon J. Iskander – Bar No. 300916  
**SHULMAN HODGES & BASTIAN LLP**  
100 Spectrum Center Drive, Suite 600  
Irvine, California 92618  
Telephone: (949) 340-3400  
Facsimile: (949) 340-3000  
Email: lbui@shbllp.com;  
biskander@shbllp.com

Attorneys for Charles W. Daff,  
Chapter 7 Trustee

FILED & ENTERED

JUN 30 2017

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY hawkinso DEPUTY CLERK

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION**

In re ) Case No. 6:16-bk-20368-MJ  
)  
**MABEL VIRGINIA LEMOI,** ) Chapter 7  
)  
Debtor. ) Adversary No. 6:17-ap-01052-MJ

**JUDGMENT**

**CHARLES W. DAFF, solely in his capacity**  
**as the Chapter 7 Trustee for the**  
**bankruptcy estate of Mabel Virginia**  
**Lemoi,**

Plaintiff,

vs.

**PINENUT PATH, LLC, a Nevada Limited**  
**Liability Company,**

Defendant.

1 The Court, having reviewed and approved the Stipulation for Entry of Judgment between  
2 Charles W. Daff, solely in his capacity as Chapter 7 trustee ("Trustee") for the bankruptcy estate  
3 ("Estate") of Mabel Virginia Lemoi ("Debtor") and Pinenut Path, LLC ("Defendant"), and good  
4 cause appearing, it is hereby

5 **ORDERED, ADJUDGED, AND DECREED** that the transfer of the real property  
6 located at 12446 15th Street, Yucaipa, CA 92399 ("Property") from Debtor to Defendant  
7 pursuant to a Grant Deed recorded on January 5, 2007 in the San Bernardino County Recorder's  
8 Office as Document Number 2007-0011066 is void and the Property is preserved for the benefit  
9 of the estate pursuant to 11 U.S.C. § 551; it is hereby further

10 **ORDERED, ADJUDGED, AND DECREED** that the Property is property of the Estate  
11 and is under the sole control and administration of the Trustee; it is hereby further


12 **ORDERED, ADJUDGED, AND DECREED** that the Defendant has no interest  
13 whatsoever in the Property; it is hereby further

14 **ORDERED, ADJUDGED, AND DECREED** that any equity in the Property is not  
15 exempt pursuant to 11 U.S.C. § 522(g); it is hereby further

16 **ORDERED, ADJUDGED, AND DECREED** that the Defendant shall within seven (7)  
17 days of the entry of Judgment transfer title to the Property to the Trustee by executing a valid  
18 quitclaim deed from Pinenut Path, LLC to Charles W. Daff as Trustee for the Bankruptcy Estate  
19 of Mabel Virginia Lemoi and deliver the same to the Trustee for recordation

20 ###

21  
22  
23  
24  
25  
26  
27 Date: June 30, 2017

28  
  
Meredith A. Jury  
United States Bankruptcy Judge

RECORDING REQUESTED BY

5252-000

12446 15th St., Yucaipa, CA 92399 (APN: 0301-081-25)

AND WHEN RECORDED MAIL DOCUMENT AND  
TAX STATEMENT TO:

NAME Charles W. Daff, Chapter 7 Trustee

STREET 2107 N. Broadway

ADDRESS Suite 308

CITY, STATE & Santa Ana, CA 92706

ZIP CODE (657) 218-4800

TITLE ORDER NO. \_\_\_\_\_

ESCROW NO. \_\_\_\_\_

Recorded in Official Records,  
County of San Bernardino  
Doc#: 2018-0329639  
9/05/2018 4:56 PM

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**QUITCLAIM DEED**

TRA: \_\_\_\_\_

APN: 0301-081-25

The undersigned grantor(s) declare(s) R & T 11922

DOCUMENTARY TRANSFER TAX \$ -0- no consideration

☐ computed on full value of property conveyed, or  
☐ computed on full value less liens and encumbrances remaining at time of sale.  
☐ Unincorporated Area City of YUCAIPA

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, I (We) \_\_\_\_\_

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

(NAME OF GRANTOR(S))

hereby remise, release and quitclaim to Charles W. Daff, solely in his capacity as the Chapter 7 Trustee for the bankruptcy estate of MABEL

VIRGINIA LEMOI, Debtor (United States Bankruptcy Court, Central District of California, Riverside Division, Case No: 6:16-bk-20368-MJ)

(NAME OF GRANTEE(S))

the following described real property in the City of YUCAIPA, County of SAN BERNARDINO,

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(Insert Legal Description)

SEE EXHIBIT "B" ATTACHED HERETO AND INCORPORATED HEREIN BY THIS REFERENCE.

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DATED: 7/6/17

A notary public or other officer completing this certificate  
verifies only the identity of the individual who signed the  
document to which this certificate is attached, and not  
the truthfulness, accuracy, or validity of that document.

PINENUT PATH LCC [actually: PINENUT PATH,  
LLC, a Nevada limited liability company]

Name BY: Mabel V. Lemoi  
NAME/TITLE: Mabel V. Lemoi, sole Managing Member

THE LEMOI LIVING TRUST [actually: The Alpherie L. And

Name Mabel V. Lemoi Living Trust, dated July 2, 1999]

BY: Mabel V. Lemoi  
NAME/TITLE: Mabel V. Lemoi, sole Trustee

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On July 6, 2017 before me, P. LITTLE, Notary Public, personally appeared  
(here insert name and title of the officer)

MABEL V. LEMOI

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument  
and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their  
signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature P. Little (SEAL)

MAIL TAX STATEMENT AS DIRECTED ABOVE

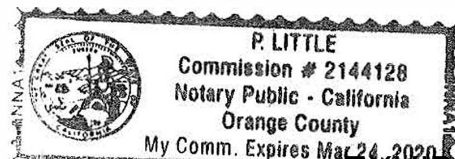


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**EXHIBIT "B"**  
**TO**  
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Lynda T. Bui – Bar No. 201002  
Brandon J. Iskander – Bar No. 300916  
**SHULMAN HODGES & BASTIAN LLP**  
100 Spectrum Center Drive, Suite 600  
Irvine, California 92618  
Telephone: (949) 340-3400  
Facsimile: (949) 340-3000  
Email: lbui@shbllp.com;  
biskander@shbllp.com

Attorneys for Charles W. Daff,  
Chapter 7 Trustee

FILED & ENTERED

JUN 30 2017

CLERK U.S. BANKRUPTCY COURT  
Central District of California  
BY hawkinso DEPUTY CLERK

**UNITED STATES BANKRUPTCY COURT**

**CENTRAL DISTRICT OF CALIFORNIA, RIVERSIDE DIVISION**

In re ) Case No. 6:16-bk-20368-MJ  
)  
**MABEL VIRGINIA LEMOI,** ) Chapter 7  
)  
Debtor. ) Adversary No. 6:17-ap-01052-MJ

**JUDGMENT**

**CHARLES W. DAFF, solely in his capacity**  
**as the Chapter 7 Trustee for the**  
**bankruptcy estate of Mabel Virginia**  
**Lemoi,**

Plaintiff,

vs.

**PINENUT PATH, LLC, a Nevada Limited**  
**Liability Company,**

Defendant.

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8 Office as Document Number 2007-0011066 is void and the Property is preserved for the benefit  
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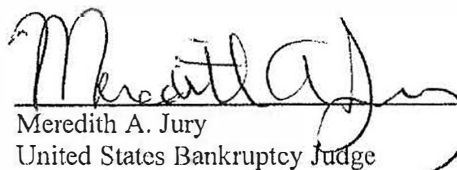
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19 of Mabel Virginia Lemoi and deliver the same to the Trustee for recordation

20 ###

21  
22  
23  
24  
25  
26 Date: June 30, 2017

27   
Meredith A. Jury  
United States Bankruptcy Judge

# **EXHIBIT 2**

## **PURCHASE AND SALE AGREEMENT**

This Purchase and Sale Agreement (the "Agreement") is made by and between Charles W. Daff, solely in his capacity as the Chapter 7 Trustee ("Trustee" or "Seller") for the bankruptcy estate ("Estate") of Mabel Virginia Lemoi ("Debtor") in the case entitled In re Mabel Virginia Lemoi, Case No. 6:16-bk-20368-SC, on the one hand, and Steve A. Gauthier, an individual (referred to herein as "Buyer"), on the other hand (the Seller and Buyer are collectively referred to herein as the "Parties" or may sometimes be referred to individually as "Party").

### **I. RECITALS**

This Agreement is made by the Parties hereto with reference to the following facts:

1.1 On November 22, 2016, the Debtor filed a voluntary petition ("Petition Date") under Chapter 7 of the Bankruptcy Code with the Bankruptcy Court for the Central District of California, Riverside Division ("Bankruptcy Court"). Charles W. Daff is the duly appointed and acting Chapter 7 Trustee for the Debtor's Estate.

1.2 On December 6, 2016, the Debtor listed an interest in the real property located at 12446 15th Street, Yucaipa, California 92399 ("Property") on her bankruptcy Schedules A/B. However, the Trustee became aware that title was then, in fact, vested in Pinenut Path, LLC pursuant to a Quitclaim Deed executed by "Alpherie L. Jr. and Mabel V. Lemoi, Trustee's [*sic.*] of the Lemoi Living Trust" and recorded on January 5, 2007 in the Official Records of the County of San Bernardino as Document No. 2007-0011066 ("January 2007 Quitclaim Deed").

1.3 On March 3, 2017, the Trustee filed an adversary proceeding in the Bankruptcy Court against Pinenut Path, LLC, commencing the adversary proceeding entitled Daff v. Pinenut Path, LLC, 6:17-ap-01052-MJ ("Adversary Proceeding"), to void the January 2007 Quitclaim Deed and recover the Property for the benefit of the Estate.

1.4 Pursuant to a Stipulation for Entry of Judgment, Judgment was entered in the Adversary Proceeding voiding the January 2007 Quitclaim Deed and awarding turnover of the Property to the Trustee on behalf of the Estate. Also pursuant to the Judgment rendered in the Adversary Proceeding, the Debtor as the sole surviving managing member of Pinenut Path LLC executed a quitclaim deed to the Trustee for the Property.

1.5 On September 5, 2018, the Trustee recorded the quitclaim deed for the Property in the Official Records of the County of San Bernardino as Document No. 2018-0329639. Title to the Property is now vested in "Charles W. Daff, solely in his capacity as the Chapter 7 Trustee for the bankruptcy estate of MABEL VIRGINIA LEMOI, Debtor (United States Bankruptcy Court, Central District of California, Riverside Division, Case No. 6:16-bk-20368-MJ)."

### **Buyer's Offer to Purchase the Estate's Interest in the Property**

1.6 The Buyer has offered to purchase the Estate's interest in the Property, subject to all liens and encumbrances, for \$120,000.00, subject to overbids at the time of the Sale Hearing. Buyer is not obligated to overbid at the Sale Hearing. If the Trustee is authorized to administer the Property subject to all liens and encumbrances, the Trustee does not believe that any tax consequences will inure to the Estate through foreclosure and the Estate will receive a net benefit of \$120,000.00 for its interest in the Property.

**NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION**, the adequacy of which is hereby acknowledged by each party hereto, and in consideration of the mutual promises and covenants set forth below, the Parties hereto agree as follows:

## **II. DEFINITIONS**

The following terms, wherever used in this Agreement, shall have the respective meanings set forth below:

2.1 **Closing:** The term "Closing" shall mean the recordation of a quitclaim deed in substantially the form as attached hereto as **Exhibit A**, with the Office of the County Recorder for the County of San Bernardino, California, conveying title to the Property from the Seller to the Buyer.

2.2 **Escrow:** The term "Escrow" shall mean the escrow to be opened with Escrow Holder for the transfer of the Property from the Seller to the Buyer. Escrow shall be opened upon the mutual execution of this Agreement.

2.3 **Opening of Escrow:** The date of delivery of the fully-executed originals or counterparts of this Agreement to Escrow Holder shall be deemed the "Opening of Escrow" and Escrow Holder shall notify the Buyer and the Seller of this date.

2.4 **Escrow Holder:** The term "Escrow Holder" shall mean, A&A Escrow Services, Inc., 415 N. Crescent Drive, Suite 320, Beverly Hills, California 90210, attention Antonia Delgado; Telephone: (310)550-6055 ext. 25; Email: Antonia@aaescrow.com.

2.5 **Final Order:** The term "Final Order" shall mean an order of the Bankruptcy Court approving this Agreement which has not been reversed, stayed, modified, or amended, and as to which: (a) the time to appeal, petition for certiorari, or move for re-argument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceeding for re-argument or rehearing shall then be pending; or (b) any right to appeal, petition for certiorari, re-argument, or rehearing shall have been waived in writing in form and substance satisfactory to the Trustee and Buyer; or (c) any appeal, petition for certiorari, re-argument or rehearing has been resolved by the highest court to which the order or judgment was appealed timely or from which certiorari, re-argument, or rehearing was sought in Seller's favor.

2.6 **Good Funds:** The term Good Funds shall mean immediately available funds in the form of cash or certified funds.

2.7 **Purchase Price:** The Term "Purchase Price" shall mean the sum of One Hundred and Twenty Thousand Dollars (\$120,000.00), or the overbid price confirmed at the hearing on the Sale Motion, for the purchase of the Estate's interest in the Property on an "as is where is" basis, without any warranties either express or implied, subject to all liens and encumbrances, in immediately available and Good Funds. The Purchase Price includes a Twelve Thousand Dollar (\$12,000.00) deposit ("Deposit") [via cashier's check made payable to Charles W. Daff, Chapter 7 Trustee].

2.8 **Other Definitions:** Terms defined in any other parts of this Agreement shall have the defined meanings wherever capitalized in this Agreement. As used in this Agreement, the terms "herein," "hereof" and "hereunder" refer to this Agreement in its entirety and are not limited to any specific sections, and the term "person" means any natural person, other legal entity, or combination of natural persons and other legal entities. Wherever appropriate in this Agreement, the singular shall be deemed to refer to the plural and the plural to the singular, and pronouns of certain genders shall be deemed to comprehend either or both of the genders.

### III. PURCHASE AND SALE OF THE PROPERTY

3.1 Agreement to Purchase: Subject to the terms and conditions of this Agreement, on the Closing date Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall pay the Purchase Price, acquire and accept from the Seller, all of Seller's right, title and interest in and to the Property together with all rights and privileges appurtenant thereto, on an **"AS IS - WHERE IS" basis without representations or warranties of any kind as set forth in Paragraph 3.5.**

3.2 Payment of Purchase Price: Concurrent with the execution and delivery of this Agreement, the Buyer shall deliver the Deposit to the Trustee for depositing into Escrow. The Deposit shall immediately become non-refundable to the Buyer except if a Closing does not occur as a result of the Trustee's inability to obtain the Sale Order or if Escrow cannot close for any reason that is not within Buyer's control, including but not limited to acts or decisions by third parties including Trustee, Bankruptcy Court, or third party lien holders, including but not limited to Chase Bank, or as otherwise provided in this Paragraph. Buyer shall deliver to the Seller proof of committed funds available to Buyer sufficient to enable Buyer to consummate the acquisition contemplated herein, which proof shall be in the form of a letter of credit; loan commitment or other form acceptable to the Seller in the Seller's sole discretion. In the event that either (i) Buyer fails to timely provide any such proof, or (ii) the Seller determines, in his sole discretion, that any proof of funds provided to Seller by Buyer is unacceptable, the Seller shall have the right, at the Seller's option, to provide written notice to Buyer that this Agreement is terminated. In the event that the Seller exercises such termination right, this Agreement shall terminate effectively as of the date of the Seller's written notice to Buyer, whereupon the Deposit (if theretofore deposited with the Escrow Holder) shall be returned to Buyer within fourteen (14) days and Buyer and Seller shall each be relieved of any further obligation hereunder. The balance of the Purchase Price shall be delivered to escrow within one (1) business day of entry of the Final Order.

3.3 Transfer of Property: The Seller will transfer the Property subject to any and all Liens and Encumbrances, with any and all Liens and Encumbrances not released prior to close of Escrow or satisfied through Escrow to attach to the Property transferred to the Buyer. The Buyer acknowledges it is purchasing the Property subject to any and all Liens and Encumbrances.

3.4 Risk of Loss: The Parties agree that the risk of loss to the Property shall transfer to the Buyer immediately upon Closing. The Buyer shall NOT take possession of the Property prior to Closing.

3.5 Purchase Without Warranties: The Buyer agrees to purchase the Property from the Seller on an **"AS IS - WHERE IS" basis without representations or warranties of any kind, express or implied, being given by the Trustee, concerning the value, condition, fitness of purpose for any use thereof, the quality of the title thereto, or any other matters relating to the Property, subject to any and all liens, encumbrances, claims and interests (collectively the "Liens and Encumbrances") existing as to the Property transferred. The Buyer acknowledges that it is familiar with the Property and that any use of the Property may be complicated by disputes with other lienholders and/or any adverse parties. The Buyer acknowledges that the Buyer has inspected the Property, and upon Bankruptcy Court approval of this Agreement, the Buyer forever waives, for itself, and its successors and assigns, any and all claims against the Estate, Charles W. Daff, as the Trustee of the Estate and in his individual capacity, and his attorneys, agents, and employees, arising or which might otherwise arise in the future concerning the Property.**

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#### IV. CONDITIONS PRECEDENT

4.1 Entry of Sale Order: As soon as practicable after receipt of a fully-executed Purchase Agreement, the Trustee shall file a motion with the Bankruptcy Court ("Sale Motion") seeking approval of the sale contemplated herein and entry of a Final Order Approving this Agreement for a sale of the Estate's interest in the Property ("Sale Order"). The Seller makes no warranties, either express or implied, as to his ability to obtain approval of the Bankruptcy Court and entry of a Sale Order, and in the event that the Seller is unable to obtain said approval and the Sale Order, the Buyer, his affiliates, relatives, officers, directors, shareholders, agents, successors and assigns shall hold the Seller, his attorneys, agents and brokers harmless from any and all damages which the Buyer may allege it has suffered as a result therefrom. Buyer's Purchase Price and deposit shall be promptly refunded in the event the Sale Order is not obtained.

4.2 Buyer's Offer is Non-Contingent: The Buyer's offer is non-contingent.

4.3 Unknown Contingencies: If the Trustee is unable to complete the sale of the Property because of unanticipated reasons, the Buyer's sole damages will be limited to a refund of the Purchase Price and any deposits made thereof.

4.4 Final Order: This Agreement shall become final upon the entry of a Final Order authorizing the Trustee to enter into it and approving the terms set forth herein. Upon entry of the Sale Order approving this Agreement, the Closing for the purchase of the Property pursuant to the terms of this Agreement shall proceed without any undue delay, and it is anticipated that closing will occur within three (3) business days of the Sale Order becoming a Final Order. The Parties agree that with respect to the provisions of this paragraph, time is of the essence.

4.5 Title and Escrow Charges Paid on Buyer's Default: In the event the Escrow and this Agreement are canceled and terminated due to Buyer's default, Buyer shall pay all title and Escrow cancellation charges.

#### V. ESCROW

5.1 Escrow: Buyer's acquisition of the Property shall be completed through an Escrow with an Escrow Holder. Within five (5) days of the execution of this Agreement, the Buyer and the Seller shall deposit with the Escrow Holder one fully executed original or counter parts of this Agreement, which shall constitute escrow instructions. The date of delivery of the fully executed originals or counter parts of this Agreement shall be deemed the "Opening of Escrow" and the Escrow Holder shall notify the Buyer and the Seller of this date.

5.2 Closing Costs: Any other costs pertaining to the Closing not otherwise expressly allocated among the Buyer and the Seller under this Agreement shall be apportioned in the manner customary in San Bernardino County, California.

5.3 Supplemental Escrow Instructions: If the Escrow Holder requires additional instructions, the Seller and the Buyer agree to execute Escrow Holder's additional instructions, provided however, that in the event of any conflict between such additional instructions and this Agreement, the provisions of this Agreement shall control and prevail.

5.4 Disbursements from Escrow: The Seller shall approve in writing all disbursements to be made from Escrow on the sale of the Property. Escrow Holder shall not be authorized to disburse any funds to anyone without prior written approval of the Seller.



## VI. TERMINATION

6.1 Termination: Upon any termination of this Agreement, the Escrow for the purchase of the Property shall be cancelled, all instruments shall be returned to the respective parties who executed the same and neither party shall have any further obligation to the other as to the Property except as otherwise set forth in this Agreement. This Agreement may be terminated as follows:

a. By Seller: Seller may terminate this Agreement by giving written notice to the Buyer at any time prior to the Closing in the event the Buyer is in breach of any representation, warranty or covenant contained in this Agreement in any material respect or is otherwise unable to fulfill its conditions to the Closing, it being understood and agreed that TIME SHALL BE OF THE ESSENCE with respect to the performance of Buyer's obligations hereunder; provided that, any such breach by the Buyer shall trigger an obligation by the Seller to provide prompt notice to the Buyer of the alleged breach (to the extent that the Seller is aware thereof and to the extent that any such alleged breach is curable), including a detailed description of the facts and circumstances giving rise to such alleged breach, and the Buyer shall have a period of ten (10) business days following receipt of such notice to cure the alleged breach (but in any event to have been completed no later than the day preceding the Closing).

b. By Seller: If the Seller is unable to obtain the Sale Order.

c. By Buyer and Seller by Mutual Consent: Buyer and Seller may terminate this Agreement by mutual written consent at any time prior to the Closing.

6.2 Fees: Should the termination of this Agreement be as a result of any election permitted under this Agreement by either Party (and provided the terminating Party is not otherwise in default hereunder) the Purchase Price and deposit shall be returned to the Buyer. In the event that the Buyer is the terminating party and the Buyer is in default under this Agreement, the Seller shall retain the Deposit without any deduction.

## VII. CLOSING

7.1 Purchase Price Plus Costs: The Purchase Price together with any additional prorations and costs chargeable to Buyer pursuant to the terms of this Agreement, shall be deposited by the Buyer with the Escrow Holder in Good Funds on or before Closing. Escrow fees shall be split between Buyer and Seller in the manner customary in the County where the Property is located. Escrow shall provide an estimated closing statement which includes the estimated closing costs for Buyer and Seller before close of escrow. Such costs shall be disbursed by the Escrow Holder to the Seller at Closing. The Escrow Holder is instructed to withhold from the amount disbursed to the Seller the prorations and costs chargeable to the Seller.

7.2 Fees and Expenses: Buyer shall pay all premiums for a standard form CLTA Owner's Policy of Title Insurance issued by the Title Company, in the face amount of the Purchase Price. The cost of any additional title coverage, extended coverage, coverage which requires the preparation of a survey, and any endorsements shall be the expense of the Buyer. Buyer shall pay all transfer, conveyance and sales taxes. Buyer and Seller shall each pay the fees of its respective attorneys and other consultants.

7.3 Execution of Documents: The Seller shall execute the quitclaim deed and such other agreements and documents as necessary to effectuate the Agreement, all of which shall be deposited with the Escrow Holder at least two (2) business days prior to Closing. The original recorded quitclaim deed shall be returned by the San Bernardino County Recorder's Office to the Buyer and the Escrow Holder shall obtain at recording a conformed copy of the quitclaim deed and deliver a copy to the Buyer and

Seller. On and after the Closing, the Parties agree that they will execute any and all additional documents and take all additional steps which may be necessary or convenient to consummate the Agreement and accomplish the purposes thereof.

7.4 Insurance: Any insurance which Seller may have maintained related to the Property will terminate at the Closing. Buyer is advised to obtain appropriate insurance to cover the Property.

7.5 Apportionment: All items of income and expense related to the Property, including, without limitation, collected rent and additional rent, real estate taxes, all utilities applicable to the Property, other operating charges, and any other matters customarily adjusted at Closing are to inure to the Buyer.

7.6 Broker Commission: No broker commission shall be incurred and/or paid as a party of this Agreement. The Seller and Buyer are not represented by a real estate broker. The Seller and Buyer have not employed a real estate broker to assist in consummating the terms of this Agreement and will not incur the costs associated with broker commissions.

### **VIII. SELLER'S WARRANTIES**

8.1 Trustee's Authority: Subject to the Bankruptcy Court approval of this Agreement and all other documents to be executed by the Seller and delivered to the Buyer, prior to or at the Closing, have been or shall be duly authorized an executed and delivered by the Seller, shall be legal, valid and binding obligations of the Debtor's Estate and shall be enforceable in accordance with their respective terms.

8.2 No Indemnity: Buyer acknowledges that the Trustee will not indemnify the Buyer with regard to any matters relating to the sale of the Property.

8.3 Purchase Without Warranties: The Buyer acknowledges that it is purchasing the Property from the Seller on an "AS IS - WHERE IS" basis without representations or warranties of any kind, express or implied, being given by the Seller, concerning the value, condition or fitness of purpose for any use thereof (prior, present and future), or otherwise. The Trustee does not warrant or represent the Property's compliance with any applicable federal, state or local environmental laws, zoning laws or applicable regulations. The Buyer shall agree that as of the Closing, the Buyer is acquiring the Property "as is," with all faults and conditions then existing on the Property, including any hazardous substances or hazardous waste" (as defined below) that may be located on, under or around the Property, whether known or unknown, and Buyer shall assume all responsibilities for all such faults and conditions, whether disclosed or not. The Buyer represents and warrants that it is purchasing the Property as a result of its own investigations and is not buying the Property pursuant to any representation made by any broker, agent, accountant, attorney or employee acting at the direction or on behalf of the Seller. The Buyer acknowledges that the Buyer has inspected the Property, and upon Bankruptcy Court approval of this Agreement, the Buyer forever waives, for himself, and his successors and assigns, any and all claims against the Debtor's Estate, Charles W. Daff, as the Trustee and in his individual capacity, and his attorneys, agents, and employees, arising or which might otherwise arise in the future concerning the Property. "Hazardous materials" as used in this Agreement, is defined to include any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California, the United States government due to its toxicity, corrosiveness, reactivity or risk to public health and/or safety, including, without limitation, petroleum or petroleum products or any distillate thereof, PCB's and asbestos.

8.4 Survivability: The Seller's warranties, representations and covenants in this Agreement and the Debtor's Estate's liability for any breach thereof, if any, shall survive the Closing.

## IX. BUYER'S WARRANTIES

9.1 Buyer's Representations and Warranties: The Buyer hereby warrants, represents and covenants to and with the Seller, all of which shall be true and correct at the Closing, as follows:

a. Power and Authority: The Buyer has the requisite capacity and authority to enter into and perform this Agreement, and no additional consents or approval, including, without limitation, spousal court or governmental approvals, are required in connection therewith.

b. Authorization of Agreement: Buyer has taken all actions required on its part by law in order to consummate the transactions contemplated hereby.

c. Execution, Delivery and Performance: This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of the Buyer and, subject to the approval of the Bankruptcy Court, is enforceable against the Buyer in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application which may affect the enforcement of creditors' rights generally and by general equitable principles.

d. Effect of Agreement: The execution and delivery by Buyer of this Agreement, the purchase by Buyer of the Property, the performance by Buyer of his obligations pursuant to the terms of this Agreement, and the consummation of the transactions contemplated hereby, do not and will not, with or without the giving of notice or lapse of time, or both: (a) violate any provision of law, statute, rule, regulation or executive order to which Buyer or any of its assets or properties is subject which could have a material adverse effect on Buyer; or (b) violate any judgment, order, writ or decree of any court or administrative body applicable to Buyer or any of Buyer's assets or properties.

9.2 Litigation: There is no relevant litigation, nor any order, decree or judgment, in progress or pending, or, to the knowledge of Buyer, threatened, against or relating to Buyer and, to Buyer's knowledge, no facts or circumstances exist which would reasonably be expected to give rise to litigation which would prevent, restrain or affect Buyer's ability to perform the transaction contemplated by this Agreement.

9.3 Indemnification: The Buyer agrees to indemnify, defend and hold the Seller and the Debtor's Estate harmless from and against all claims, losses, expenses, liabilities, liens and causes of action (including, without limitation, reasonable attorneys' fees and costs of proceedings) which may be asserted against any such indemnified parties by reason of:

- a. Any act or omission of the Buyer as a result of the Buyer's ownership of the Property for all periods following the Closing;
- b. The use or occupation of the Property for all periods following the Closing; and
- c. The breach of any of the representations, warranties, covenants or agreements made in this Agreement by the Buyer.

9.4 Buyer's Reliance on its Own Inspections: The Buyer covenants and agrees that except as set for in this Agreement, it is relying upon its own inspections, examinations, studies, inquiries, and personal knowledge with respect to the Property and has not relied upon any representation, warranty or statement

of the Seller, the Debtor's Estate or its agents, or employees. The Buyer, upon the Closing shall be deemed to have disclaimed and waived any and all objections to the physical and environmental characteristics and conditions of the Property including, without limitation, any hazardous materials located thereon and the condition of title thereto whether or not such conditions would be disclosed by a reasonable and diligent inspection. Except as expressly set forth in this Agreement, neither the Seller, or the Debtor's Estate, its officers, directors, employees, agents, members or representatives has made any representations, warranties or agreements to or with the Buyer as to any matters concerning the Property, the present use thereof, the existence of hazardous materials thereon, of the suitability of the Property or the Buyer's intended or contemplated use. The foregoing disclaimers and waivers includes, without limitation, topography, climate, air, water rights, utilities, present and future zoning, governmental restrictions, soil, subsoil, environmental contamination, the purpose to which the Property is suited, drainage, access to public roads, proposed routes or roads or extensions thereof or the availability of governmental permits or approvals of any kind. The Buyer agrees that the Seller and the Debtor's Estate shall have no responsibility for any patent or latent defect or physical condition of the Property, whether or not known or discovered, and the Buyer accepts all such responsibility. The Property is being transferred and sold "AS IS - WHERE IS" with all faults without representation or warranty expressed or implied by the Seller or the Debtor's Estate by operation of law or otherwise. The Seller expressly disclaims, which the Buyer hereby acknowledges and accepts, any implied warranty of condition, habitability, merchantability, or fitness for a particular purpose or use.

9.5 Buyer's Closing Funds: On or before the Closing, Buyer shall have the necessary funds immediately available to consummate the transaction contemplated by this Agreement and there is no financing contingency with respect to Buyer's obligations in connection with this transaction.

9.6 Survivability: The Buyer's warranties, representations and covenants in this Agreement and the Buyer's liability for any breach thereof shall survive the Closing and shall insure to the benefit of the Debtor's bankruptcy Estate and its successors and assigns.

## **X. MISCELLANEOUS**

10.1 Entire Agreement: This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, terms, conditions and representations, written or oral, made by any of the Parties or their agents, concerning the matters covered by this Agreement.

10.2 Successors and Assigns: This Agreement shall inure to the benefit of, and shall be binding upon the Parties, and each of them, and their respective successors, assigns, heirs, partners, agents, officers, corporations, partnerships, partners, shareholders, representatives, and each of them.

10.3 Bankruptcy Court Jurisdiction: The Property is under the jurisdiction of the Bankruptcy Court and considered to be an asset of the Estate, thus the resolution of any and all disputes between the Trustee and the Buyer concerning the Property shall be resolved by the United States Bankruptcy Court for the Central District of California, Riverside Division. Further, if a dispute arises, such dispute may initially be resolved through the Mediation Program pending in the United States Bankruptcy Court for the Central District of California.

10.4 Chapter 7 Trustee Capacity to Sign: The Trustee is signing this Agreement in his capacity solely as Chapter 7 Trustee of the Estate. Nothing contained herein shall in any way impute liability to the Trustee personally or anyone acting on the Trustee's behalf, including but not limited to his counsel Shulman Hodges & Bastian LLP.

10.5 Attorneys' Fees: In the event any claim, dispute and/or litigation arises out of this Agreement, the prevailing party shall be entitled to recovery of its attorneys' fees and costs incurred in prosecuting or defending said claim, dispute and/or litigation.

10.6 Governing Law: This Agreement is to be governed by and construed in accordance with federal bankruptcy law, to the extent applicable, and where state law is implicated, the laws of the State of California shall govern.

10.7 Counter-parts: This Agreement may be executed in one or more Counter-parts (multiple signatures) each of which shall be deemed an original, and all of which constitute one and the same instrument.

10.8 Headings: Headings in this Agreement are for convenience or reference only and shall not limit or otherwise affect the meaning hereof.

10.9 Gender: Whenever in this document the context may so require, the masculine gender shall be deemed to include the feminine and neuter genders, and vice-versa.

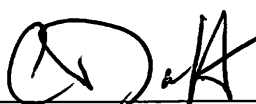
10.10 Recitals: Each term of this Agreement is contractual and not merely a recital.

10.11 Severability: If any immaterial provision of this Agreement is held, determined or adjudicated to be invalid, unenforceable or void for any reason, each such provision shall be severed from the remaining portions of this Agreement and shall not affect the validity and enforceability of such remaining material provisions.

10.12 Drafting: The Parties have all participated in the drafting of this Agreement and agree that any rule providing for construction against the drafting party shall not apply to this Agreement.

**BY SIGNING THIS AGREEMENT WHERE INDICATED BELOW, I CERTIFY THAT I HAVE READ THE FOREGOING AGREEMENT IN ITS ENTIRETY, THAT I FULLY UNDERSTAND ALL THE WORDS, LANGUAGE, TERMS AND CONDITIONS CONTAINED HEREIN AND THAT I AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS SET FORTH HEREIN.**

Dated: December 10, 2018

  
\_\_\_\_\_  
Charles W. Daff,  
Solely in his capacity as the Chapter 7 Trustee  
for the bankruptcy estate of Mabel Virginia Lemoi

Dated: December \_\_, 2018

\_\_\_\_\_  
Steve A. Gauthier

**[SIGNATURES CONTINUED ON NEXT PAGE]**

10.5 Attorneys' Fees: In the event any claim, dispute and/or litigation arises out of this Agreement, the prevailing party shall be entitled to recovery of its attorneys' fees and costs incurred in prosecuting or defending said claim, dispute and/or litigation.

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Dated: December \_\_, 2018

\_\_\_\_\_  
Charles W. Daff,  
Solely in his capacity as the Chapter 7 Trustee  
for the bankruptcy estate of Mabel Virginia Lemoi

Dated: December 10, 2018

\_\_\_\_\_  
Steve A. Gauthier

**[SIGNATURES CONTINUED ON NEXT PAGE]**

**APPROVED AS TO CONTENT AND FORM:**

Dated: December 11, 2018

**SHULMAN HODGES & BASTIAN LLP**

Two handwritten signatures in black ink, one on the left and one on the right, positioned above a horizontal line.

Lynda T. Bui  
Brandon J. Iskander  
Counsel for the Chapter 7 Trustee  
for the bankruptcy estate of Mabel Virginia Lemoi

# **EXHIBIT 3**





415 N. Crescent Drive, Suite 320  
Beverly Hills, CA 90210

Phone: (310) 550-6055  
Fax: (310) 550-6130

Printed: January 11, 2019 01:12pm

**MASTER ESTIMATED SETTLEMENT STATEMENT**

**PROPERTY:** 12446 15th Street  
Yucaipa, CA 92399  
**BUYER:** Steve A. Gauthier

**CLOSING/RECORD  
DATE:**

**SELLER:** Bankruptcy Estate of Mabel Virginia Lemoi (Case  
No. 6:16-bk-20368-SC)

**ESCROW NO.:** 104359-AA

SELLER		BUYER	
<u>DEBITS</u>	<u>CREDITS</u>	<u>DEBITS</u>	<u>CREDITS</u>
<b>FINANCIAL CONSIDERATION</b>			
12,000.00			12,000.00
	120,000.00	120,000.00	
<b>OTHER DEBITS/CREDITS</b>			
	Cushion (to be refunded after figures are finalized at closing)	400.00	
<b>TITLE/TAXES/RECORDING CHARGES - First American Title Company</b>			
	Title - Owner's Title Insurance	649.00	
	Title - Messenger Fee if any	35.00	
	Title - Sub Escrow Fee	125.00	
	Title - Wire Fee if any	30.00	
	Title - Recording Service Fee	30.00	
	Recording Quitclaim Deed	50.00	
	Recording Court Order	75.00	
	SB2 Recording Fees	225.00	
	1st 1/2 County Taxes 2018-19 + penalty	988.92	
	1st 1/2 County Taxes 2018-19 + penalty to San Bernardino County Tax Collector	1,002.47	
	1st 1/2 County Taxes 2018-19 + penalty	3,607.08	
<b>ESCROW CHARGES - A &amp; A Escrow Services, Inc.</b>			
1,000.00	Title - Escrow Fee	1,000.00	
	Title - Wire Fee IF ANY	50.00	
25.00	Title - Messenger/FedEx Fees IF ANY	150.00	
50.00	Title - File Archive Fee*	50.00	
106,925.00	<b>Net Proceeds</b>		
	<b>Funds required</b>		116,467.47
\$ 120,000.00	\$ 120,000.00 <b>TOTAL</b>	\$ 128,467.47	\$ 128,467.47

**THIS IS AN ESTIMATE ONLY AND FIGURES ARE SUBJECT TO CHANGE**

**EXHIBIT 3**

# **EXHIBIT 4**



Pacific Specialty Insurance Company  
P.O.Box 40 Anaheim CA 92815  
800-303-5000

Print

Credit Card Payment Receipt  
(Print this page for your records)

**Named Insured:**  
Steve Gauthier  
32260 Avenue E  
Yucaipa , CA 92399

**Producer: B37475 (909)886-8528**  
Westenberger William M  
2124 N Waterman Ave  
San Bernardino , CA 92408

**Policy Number:** ENY 0517162-00(00)  
**Credit Card:** XXXX-XXXX-XXXX-4073 (VISA)  
**Charged Amount:** \$ 187.80  
**Transaction Date:** 12/18/2018

Dear Policy Holder,

Thank you for allowing us to meet your insurance needs. The payment of \$ 187.80 has been charged to your credit card as a down payment for your policy on 12/18/2018.

Should you have any questions regarding this transaction or your policy, please contact your producer at the above number or our customer service department at 1-800-303-5000.

Sincerely,

Pacific Specialty Insurance Company

EXHIBIT 4



Please allow a  
minimum of 48  
hours to process.

## Approved

Please Print This Page For Your Records



Result Text:	I00001
Account Type:	Visa
Description:	This transaction has been approved.
Carrier:	Integon National - Mobile Home
Policy Number	imhm1289825
Payment Type	Down Payment - New Policy
Installments	5 installments
Insured Name	steve gauthier
Submitter Name	Bill Westenberger
Confirmation Number	12/18/2018 14:22 27736-082022
Payment Amount	\$510.25
Convenience Fee	\$5.00
Total Amount	<b>\$515.25</b>

Make Another Payment

EXHIBIT 4

# **EXHIBIT 5**

**Updated**



*First American Title*

## **First American Title Company**

**4 First American Way  
Santa Ana, CA 92707**

California Department of Insurance License No. 151

Antonia Delgado  
A & A Escrow Services, Inc  
415 North Crescent Drive, Suite 320  
Beverly Hills, CA 90210  
Phone: (310)550-6055  
Fax:

Customer Reference: 104359-AA  
Order Number: O-SA-5670177 (dt)

Title Officer: Debbie Tognetti  
Phone: (714)250-8579  
Fax No.: (714)481-2956  
E-Mail: FAHQ-RA-octitle3@firstam.com  
Buyer: Steve Gauthier  
Owner: MABEL VIRGINIA LEMOI  
Property: 12446 15Th Street  
Yucaipa, CA 92399

### **PRELIMINARY REPORT**

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Exhibit A attached. *The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.* Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

**Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.**

**It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.**

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of December 10, 2018 at 7:30 A.M.

The form of Policy of title insurance contemplated by this report is:

ALTA/CLTA Homeowner's (EAGLE) Policy of Title Insurance (2013) and ALTA Ext Loan Policy 1056.06 (06-17-06) if the land described is an improved residential lot or condominium unit on which there is located a one-to-four family residence; or ALTA Standard Owner's Policy 2006 (WRE 06-17-06) and the ALTA Loan Policy 2006 (06-17-06) if the land described is an unimproved residential lot or condominium unit

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

CHARLES W. DAFF, SOLEY IN HIS CAPACIT AS THE CHAPTER 7 TRUSTEE FOR THE BANKRUPTCY  
ESTATE OF MABEL VIRGINIA LEMOI DEBTOR UNDER CASE NO: 6:16-BK-20368-MJ

The estate or interest in the land hereinafter described or referred to covered by this Report is:

FEE

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. General and special taxes and assessments for the fiscal year 2018-2019.

First Installment:	\$3,279.16, DELINQUENT
Penalty:	\$327.92
Second Installment:	\$3,279.16, OPEN
Penalty:	\$0.00
Tax Rate Area:	022061
A. P. No.:	0301-081-25
2. The lien of tax for escaped assessment pursuant to Article 4 of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.

First Installment:	\$899.02 (DELINQUENT)
Penalty:	\$89.90
Second Installment:	\$899.00 (OPEN)
Penalty:	\$99.90
Tax Rate Area:	022061
A.P. No.:	0301-081-25 / FISCAL YEAR: 2018-2019

3. The lien of tax for escaped assessment pursuant to Article 4 of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.  
First Installment: \$911.33 (DELINQUENT)  
Penalty: \$91.14  
Second Installment: \$911.31 (OPEN)  
Penalty: \$101.14  
Tax Rate Area: 022061  
A.P. No.: 0301-081-25 / FISCAL YEAR: 2018-2019
4. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
5. An easement for PIPE LINES and incidental purposes in the document recorded July 14, 1910 in Book 463 of Deeds, Page 381.

The location of the easement cannot be determined from record information.

6. An easement for RIGHTS OF WAY and incidental purposes in the document recorded as BOOK 1466, PAGE 437 of Official Records.

The location of the easement cannot be determined from record information.

7. An easement for public utilities and incidental purposes in the document recorded as BOOK 3462, PAGE 61 of Official Records.

8. A deed of trust to secure an original indebtedness of \$180,000.00 recorded June 17, 2004 as INSTRUMENT NO. 04-428522 OF OFFICIAL RECORDS.  
Dated: June 12, 2004  
Trustor: ALPHERIE L. LEMOI JR. AND MABEL V. LEMOI, TRUSTEES OF  
THE ALPHERIE L. AND MABEL V. LEMOI LIVING TRUST  
DATED JULY 2, 1999  
Trustee: TICOR TITLE NLS, A CALIFORNIA CORPORATION  
Beneficiary: WASHINGTON MUTUAL BANK, FA, A FEDERAL ASSOCIATION,  
AND ITS SUCCESSORS OR ASSIGNS

The above deed of trust states that it secures an equity line/revolving line of credit. Prior to the payment and suspension of the equity line/revolving line of credit, an instruction to suspend and close the equity line/revolving line of credit pursuant to CA Civil Code Section 2943.1 must be executed by the borrower.

According to the public records, the beneficial interest under the deed of trust was assigned to JPMORGAN CHASE BANK, N.A. by assignment recorded August 30, 2016 as INSTRUMENT NO. 16-350170 OF OFFICIAL RECORDS.

9. Notice and certificate of occupancy for mobile home installation on a foundation system (HCD 433A(4/86) recorded May 23, 2005 as INSTRUMENT NO. 05-363669 of Official Records of San Bernardino County, California.
10. The effect of a deed of trust to secure an original indebtedness of \$ 100,000.00 recorded June 09, 2005 as INSTRUMENT NO. 05-411528 of Official Records.



Dated: June 04, 2005  
Trustor: ALPHERIE L. LEMOI JR. AND MABEL V. LEMOI, TRUSTEES OF THE  
ALPHERIE L. AND MABEL V. LEMOI LIVING TRUST DATED JULY 2,  
1999  
Trustee: TICOR TITLE NLS, A CALIFORNIA CORPORATION  
Lender: WASHINGTON MUTUAL BANK, FA, A FEDERAL ASSOCIATION, AND  
ITS SUCCESSORS OR ASSIGNS

The above deed of trust contains an erroneous or no legal description.

The above deed of trust states that it secures an equity line/revolving line of credit. Prior to the payment and suspension of the equity line/revolving line of credit, an instruction to suspend and close the equity line/revolving line of credit pursuant to CA Civil Code Section 2943.1 must be executed by the borrower.

A document recorded December 18, 2006 as INSTRUMENT NO. 06-870095 OF OFFICIAL RECORDS provides that the deed of trust or the obligation secured thereby has been modified.

According to the public records, the beneficial interest under the deed of trust was assigned to JPMORGAN CHASE BANK, N.A. by assignment recorded October 12, 2016 as INSTRUMENT NO. 16-423809 OF OFFICIAL RECORDS.

11. Rights of the public in and to that portion of the land lying within any Road, Street, Alley or Highway.
12. Water rights, claims or title to water, whether or not shown by the public records.
13. Proceedings pending in the Bankruptcy Court of the United States Bankruptcy Court Central District of California, Riverside Division District of the U.S. District Court, California , entitled in re: Mabel Virginia Lemoi, debtor, Case No. 6:16-bk-20368-MJ, wherein a petition for relief was filed on June 30, 2017.

**Prior to the issuance of any policy of title insurance, the Company will require:**

<b>INFORMATIONAL NOTES</b>
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Note: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

1. This report is preparatory to the issuance of an ALTA Loan Policy. We have no knowledge of any fact which would preclude the issuance of the policy with CLTA endorsement forms 100 and 116 and if applicable, 115 and 116.2 attached.

When issued, the CLTA endorsement form 116 or 116.2, if applicable will reference a(n) Single Family Residence known as 12446 15TH STREET, YUCAIPA, CA.

2. According to the public records, there has been no conveyance of the land within a period of twenty four months prior to the date of this report, except as follows:

A document recorded September 05, 2018 as INSTRUMENT NO. 18-329639 of Official Records.

From: PINENUT PATH LLC, A NEVADA LIMITED LIABILITY COMPANY  
To: Charles W. Daff, solely in his capacity as the Chapter 7 trustee for  
the bankruptcy estate of Mabel Virginia Lemoi, debtor (United  
States Bankruptcy Court, Central District of California, Riverside  
Division, Cas No: 6:16-bk-20368-MJ)

The map attached, if any, may or may not be a survey of the land depicted hereon. First American expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

**LEGAL DESCRIPTION**

Real property in the City of Yucaipa, County of San Bernardino, State of California, described as follows:

THE SOUTH 132 FEET OF LOT 85, ACCORDING TO MAP NO. 2 OF PART OF DUNLAP RANCH, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 20 OF MAPS, PAGE 47, RECORDS OF SAID COUNTY.

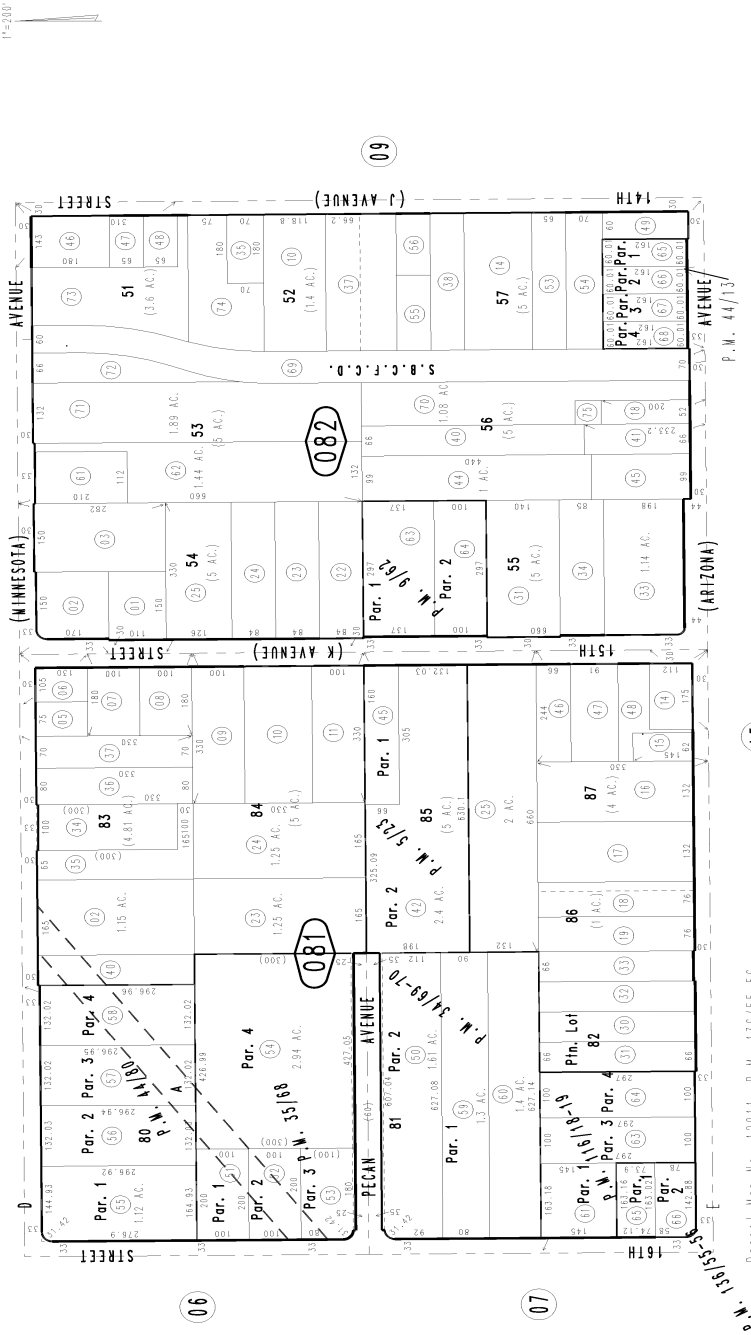
APN: 0301-081-25

0301 - 08

City of Yucaipa  
Tax Rate Area  
22061

Ptn. Sub. No. 2, Dunlap Ranch  
M.B. 20/47

THIS MAP IS FOR THE PURPOSE  
OF AD VALOREM TAXATION ONLY.



REVISED

Assessor's Map  
Book 0301 Page 08  
San Bernardino County

Parcel Map No. 12011, P.M. 136/55-56  
Ptn. Parcel Map No. 10378, P.M. 116/18-19  
Parcel Map No. 4632, P.M. 44/80  
Parcel Map No. 4806, P.M. 44/13  
Parcel Map No. 3860, P.M. 35/88  
Parcel Map No. 3801, P.M. 34/69-70  
Parcel Map No. 1015, P.M. 9/62  
Parcel Map No. 559, P.M. 5/23

January 2005

***NOTICE***

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier's checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier's checks, or certified checks whenever possible.

**EXHIBIT A**  
**LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)**

**CLTA STANDARD COVERAGE POLICY – 1990**  
**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.  
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

**CLTA/ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE (12-02-13)**  
**EXCLUSIONS**

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of those portions of any law or government regulation concerning:
  - a. building;
  - b. zoning;
  - c. land use;

- d. improvements on the Land;
  - e. land division; and
  - f. environmental protection.
- This Exclusion does not limit the coverage described in Covered Risk 8.a., 14, 15, 16, 18, 19, 20, 23 or 27.
- 2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not limit the coverage described in Covered Risk 14 or 15.
  - 3. The right to take the Land by condemning it. This Exclusion does not limit the coverage described in Covered Risk 17.
  - 4. Risks:
    - a. that are created, allowed, or agreed to by You, whether or not they are recorded in the Public Records;
    - b. that are Known to You at the Policy Date, but not to Us, unless they are recorded in the Public Records at the Policy Date;
    - c. that result in no loss to You; or
    - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.e., 25, 26, 27 or 28.
  - 5. Failure to pay value for Your Title.
  - 6. Lack of a right:
    - a. to any land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
    - b. in streets, alleys, or waterways that touch the Land.

This Exclusion does not limit the coverage described in Covered Risk 11 or 21.
  - 7. The transfer of the Title to You is invalid as a preferential transfer or as a fraudulent transfer or conveyance under federal bankruptcy, state insolvency, or similar creditors' rights laws.
  - 8. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
  - 9. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.

#### **LIMITATIONS ON COVERED RISKS**

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:  
For Covered Risk 16, 18, 19, and 21 Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.  
The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 16:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$10,000
Covered Risk 18:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 19:	1% of Policy Amount Shown in Schedule A or \$5,000 (whichever is less)	\$25,000
Covered Risk 21:	1% of Policy Amount Shown in Schedule A or \$2,500 (whichever is less)	\$5,000

#### **2006 ALTA LOAN POLICY (06-17-06)**

##### **EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- 1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
- 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

- (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
  5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
  6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
    - (a) a fraudulent conveyance or fraudulent transfer, or
    - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
  7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### EXCEPTIONS FROM COVERAGE

[Except as provided in Schedule B - Part II, [t[or T]his policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of:

##### [PART I

[The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien or right to a lien for services, labor or material not shown by the public records.

##### PART II

In addition to the matters set forth in Part I of this Schedule, the Title is subject to the following matters, and the Company insures against loss or damage sustained in the event that they are not subordinate to the lien of the Insured Mortgage:]

#### 2006 ALTA OWNER'S POLICY (06-17-06)

##### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;



- (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 or 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
- (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

#### EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses, that arise by reason of: [The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

- 1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
- 2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
- 3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
- 4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
- 5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
- 6. Any lien or right to a lien for services, labor or material not shown by the Public Records.
- 7. [Variable exceptions such as taxes, easements, CC&R's, etc. shown here.]

#### **ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (07-26-10)**

#### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- 1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 5, 6, 13(c), 13(d), 14 or 16.

- 2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
- 3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27 or 28); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
- 4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
- 5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law. This Exclusion does not modify or limit the coverage provided in Covered Risk 26.
- 6. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to Advances or modifications made after the

Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11.

7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching subsequent to Date of Policy. This Exclusion does not modify or limit the coverage provided in Covered Risk 11(b) or 25.
8. The failure of the residential structure, or any portion of it, to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This Exclusion does not modify or limit the coverage provided in Covered Risk 5 or 6.
9. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 27(b) of this policy.
10. Contamination, explosion, fire, flooding, vibration, fracturing, earthquake, or subsidence.
11. Negligence by a person or an Entity exercising a right to extract or develop minerals, water, or any other substances.



## First American Title

### Privacy Information

#### We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our subsidiaries we have adopted this Privacy Policy to govern the use and handling of your personal information.

#### Applicability

This Privacy Policy governs our use of the information that you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its Fair Information Values.

#### Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

#### Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

#### Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

#### Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's Fair Information Values. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

#### Information Obtained Through Our Web Site

First American Financial Corporation is sensitive to privacy issues on the Internet. We believe it is important you know how we treat the information about you we receive on the Internet. In general, you can visit First American or its affiliates' Web sites on the World Wide Web without telling us who you are or revealing any information about yourself. Our Web servers collect the domain names, not the e-mail addresses, of visitors. This information is aggregated to measure the number of visits, average time spent on the site, pages viewed and similar information. First American uses this information to measure the use of our site and to develop ideas to improve the content of our site. There are times, however, when we may need information from you, such as your name and email address. When information is needed, we will use our best efforts to let you know at the time of collection how we will use the personal information. Usually, the personal information we collect is used only by us to respond to your inquiry, process an order or allow you to access specific account/profile information. If you choose to share any personal information with us, we will only use it in accordance with the policies outlined above.

#### Business Relationships

First American Financial Corporation's site and its affiliates' sites may contain links to other Web sites. While we try to link only to sites that share our high standards and respect for privacy, we are not responsible for the content or the privacy practices employed by other sites.

#### Cookies

Some of First American's Web sites may make use of "cookie" technology to measure site activity and to customize information to your personal tastes. A cookie is an element of data that a Web site can send to your browser, which may then store the cookie on your hard drive.

[FirstAm.com](http://FirstAm.com) uses stored cookies. The goal of this technology is to better serve you when visiting our site, save you time when you are here and to provide you with a more meaningful and productive Web site experience.

#### Fair Information Values

**Fairness** We consider consumer expectations about their privacy in all our businesses. We only offer products and services that assure a favorable balance between consumer benefits and consumer privacy.

**Public Record** We believe that an open public record creates significant value for society, enhances consumer choice and creates consumer opportunity. We actively support an open public record and emphasize its importance and contribution to our economy.

**Use** We believe we should behave responsibly when we use information about a consumer in our business. We will obey the laws governing the collection, use and dissemination of data.

**Accuracy** We will take reasonable steps to help assure the accuracy of the data we collect, use and disseminate. Where possible, we will take reasonable steps to correct inaccurate information. When, as with the public record, we cannot correct inaccurate information, we will take all reasonable steps to assist consumers in identifying the source of the erroneous data so that the consumer can secure the required corrections.

**Education** We endeavor to educate the users of our products and services, our employees and others in our industry about the importance of consumer privacy. We will instruct our employees on our fair information values and on the responsible collection and use of data. We will encourage others in our industry to collect and use information in a responsible manner.

**Security** We will maintain appropriate facilities and systems to protect against unauthorized access to and corruption of the data we maintain.

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 100 Spectrum Center Drive, Suite 600, Irvine, CA 92618.

A true and correct copy of the foregoing document entitled (*specify*): **CHAPTER 7 TRUSTEE'S MOTION FOR ORDER: (1) APPROVING THE SALE OF THE ESTATE'S RIGHT, TITLE, AND INTEREST IN REAL PROPERTY SUBJECT TO ALL EXISTING LIENS, CLAIMS, ENCUMBRANCES, CHARGES AND INTERESTS PURSUANT TO BANKRUPTCY CODE § 363(b)(1) SUBJECT TO OVERBIDS; (2) APPROVING BIDDING PROCEDURES UTILIZED; AND (3) GRANTING RELATED RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES AND DECLARATION OF CHARLES W. DAFF IN SUPPORT THEREOF** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) January 15, 2019 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **COUNSEL FOR CHAPTER 7 TRUSTEE: Lynda T Bui** lbui@shbllp.com, ecf.filings@shbllp.com
- **CHAPTER 7 TRUSTEE: Charles W Daff (TR)** charleswdaff@gmail.com, c122@ecfbis.com
- **COUNSEL FOR CHAPTER 7 TRUSTEE: Brandon J Iskander** biskander@shbllp.com, ncarlson@shbllp.com
- **INTERESTED PARTY: Valerie Smith** claims@recoverycorp.com
- **INTERESTED PARTY: United States Trustee (RS)** ustpreion16.rs.ecf@usdoj.gov

☐ Service information continued on attached page.

**2. SERVED BY UNITED STATES MAIL:**

On (date) January 15, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

**Judge's Copy**

The Honorable Scott Clarkson  
U.S. Bankruptcy Court  
Ronald Reagan Federal Building  
411 W. Fourth Street, Suite 5130  
Sana Ana, CA 92701

☒ Service information continued on attached page.

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state**

**method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

January 15, 2019

Date

Nicole Carlson

Printed Name

/s/ Nicole Carlson

Signature

**2. SERVED BY U.S. MAIL**

**Buyer**

Steve Gauthier  
32260 Avenue E  
Yucaipa, CA 92399

**Lienholder:**

JPMorgan Chase  
James Dimon, CEO  
1111 Polaris Parkway  
Columbus, OH 43240  
Delaware County

**Lienholder:**

CT Corporation System  
Agent of Service of Process for JPMorgan Chase  
111 Eighth Ave, 13<sup>th</sup> Floor  
New York, NY 10011

**Auctioneer**

Todd Wohl, ASA BRE  
BraunCo  
1230 Rosecrans Ave, Suite 160  
Manhattan Beach, CA 90266

**DEBTOR**

MABEL VIRGINIA LEMOI  
12446 15TH ST  
YUCAIPA, CA 92399-1734

**DEBTOR'S COUNSEL**

OWEN T. MASCOTT, ESQ.  
72310 MERRY VALE WAY  
PALM DESERT, CA 92260

**COURT MAILING LIST**

EMPLOYMENT DEVELOPMENT DEPT.  
BANKRUPTCY GROUP MIC 92E  
P.O. BOX 826880  
SACRAMENTO, CA 94280-0001

**COURT MAILING LIST**

FRANCHISE TAX BOARD  
BANKRUPTCY SECTION MS: A-340  
P.O. BOX 2952  
SACRAMENTO, CA 95812-2952

**COURT MAILING LIST**

ARROWHEAD CU  
421 N. SIERRA WAY  
SAN BERNARDINO, CA 92410-4831

**CLAIM FILED**

ARROWHEAD CREDIT UNION  
PO BOX 735  
SAN BERNARDINO, CA 92402

**ADDITIONAL NOTICE - PREFERRED**

ARROWHEAD CREDIT UNION  
PO BOX 4100  
RANCHO CUCAMONGA, CA 91729-4100

**COURT MAILING LIST**

BANK OF AMERICA  
PO BOX 982238  
EL PASO TX 79998-2238

**COURT MAILING LIST**

CHASE  
PO BOX 15298  
WILMINGTON, DE 19850-5298

**COURT MAILING LIST**

COMENITY BANK  
PO BOX 24696  
COLUMBUS, OH 43224-0696

**COURT MAILING LIST**

LAW OFFICE OF HEMAR RUSSO & HEALD  
15910 VENTURA BLVD, STE 1201  
ENCINO, CA 91436-2813

**COURT MAILING LIST**

PUGET SOUND LEASING CO. LLC  
925 4TH AVE #2350  
SEATTLE, WA 98104-1146

**CLAIM FILED**

RADIANCE CAPITAL L.L.C.  
HEMAR ROUSSO & HEALD LLP  
ATTN: MARYANN ROUSSO  
15910 VENTURA BLVD. 12TH FLOOR  
ENCINO, CA 91436-2813

**CLAIM FILED**

CAPITAL ONE, N.A.  
BECKETT AND LEE LLP  
PO BOX 3001  
MALVERN, PA 19355-0701

**NOTICE PURPOSES**

INTERNAL REVENUE SERVICE  
PO BOX 7346  
PHILADELPHIA, PA 19101-7346

**COURT MAILING LIST**

PRC RECEIVABLES MANAGEMENT LLC  
PO BOX 41021  
NORFOLK, VA 23541-1021

**COURT MAILING LIST**

CASTLE REALTY GROUP, INC.  
4193 FLATROCK DRIVE, BUILDING 200  
RIVERSIDE, CA 92505-7133